7-28-2017

State v. Heiner Appellant's Reply Brief Dckt. 44575

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	**NO. 44575**
	)	
v.	)	**BANNOCK COUNTY NO. CR 2015-7667**
	)	
MELISSA HEINER AKA OLIN,	)	**REPLY BRIEF**
	)	
Defendant-Appellant.	)	
	)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

HONORABLE ROBERT C. NAFTZ
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Melissa Heiner contends that the district court erred by denying her request to instruct the jury pursuant to I.C. § 18-201(1) (that a mistake of fact about the nature of the substance in question renders a person incapable of committing possession of a controlled substance) and by denying her subsequent motion for a new trial based on the failure to properly instruct the jury in that regard. The State responds that the mistake-of-fact issue was adequately addressed by item 4 of the elements instruction given to the jury (that they had to find Ms. Heiner knew the substance was methamphetamine or believed it was a controlled substance). The State's argument is mistaken because the elements instruction only identifies what elements the State is required to prove, while Ms. Heiner's proposed instruction would have explained that finding a mistake of fact deprived her of the ability to even commit the charged crime. That issue was not addressed by item 4's mere identification of the knowledge element. Therefore, the proposed instruction should have been given.

Accordingly, this Court should vacate the verdict and judgment of conviction and remand this case for a new trial.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Ms. Heiner's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUES

I. Whether the district court erred when it denied Ms. Heiner's request to instruct the jury pursuant to I.C. § 18-201(1).

II. Alternatively, whether the district court erred when it denied Ms. Heiner's motion for a new trial based on the failure to instruct the jury pursuant to I.C. § 18-201(1).

ARGUMENT

I.

The District Court Erred When It Denied Ms. Heiner's Request To Instruct The Jury Pursuant To I.C. § 18-201(1)

The State does not challenge Ms. Heiner's assertions on three of the four points on when a requested instruction is required (that her proposed instruction was a proper statement of the law, that a reasonable view of some of the evidence supports her legal theory, and that it was not an improper comment on the evidence). (*See generally* Resp. Br.) Rather, the State only argues that the requested instruction was adequately covered by item 4 in the elements instruction. (Resp. Br., p.7.)

The problem with the State's argument is that it ignores the distinction between identifying what elements the State has to prove and explaining what a separate (though related) finding of fact means under the law. Specifically, in the drug possession context, the State has to prove that the defendant knew the nature of the substance allegedly possessed. *See, e.g.*, *State v. McKean*, 159 Idaho 75, 83 (2015). However, in this context, I.C. § 18-201(1) provides that a mistake of fact about the nature of the substance deprives the defendant of *the capability* of committing the charged offense. *See, e.g., State v. Goggin*, 157 Idaho 1, 7 (2014) (explaining that, if the person actually believes the substance is a benign substance, they "cannot be convicted of possession [of a controlled substance]") (internal quotation omitted).

The difference between the two is actually illustrated by Ms. Heiner's case. The prosecutor argued the jury should convict Ms. Heiner because the baggie was tucked away inside her purse, and so, she must have known that baggie was there, and because of the manner in which she had tucked the baggie away, she must have known the substance inside was an illicit substance. (Tr., p.296, 17 - p.297, L.10.) While that chain of inferences could, potentially,

establish knowledge under the language of item 4 of the elements instruction, *see, e.g.*, *State v. Armstrong*, 142 Idaho 62, 65 (Ct. App. 2005) (explaining that the knowledge element "may be proved by direct evidence or may be inferred from the circumstances"), it is not sufficient to overcome a defense under I.C. § 18-201(1). That is because a proper I.C. § 18-201(1) instruction tells the jurors that, regardless of how suspicious concealing the baggie in that manner might be, if they find that Ms. Heiner actually believed it (like the other baggie in her purse) only contained aspirin, that mistake of fact would mean she was *incapable* of committing the crime. *McKean*, 159 Idaho at 83; *Goggin*, 157 Idaho at 7. Since that issue is not addressed by item 4 in the elements instruction, a separate instruction on the mistake-of-fact defense was necessary. *See State v. Macias*, 142 Idaho 509, 510 (Ct. App. 2005) (reiterating that "[a] requested instruction *must* be given" if it is a proper statement of relevant law) (emphasis added).

This is true despite the State's reading of the commentary to the pattern instruction for possession of a controlled substance (ICJI 403). (*See* Resp. Br., p.7 (arguing that, because item 4 was added to ICJI 403 following the decision in *State v. Lamphere*, 130 Idaho 630 (1997), item 4 was intended to be the instruction on I.C. § 18-201(1)).) That argument is belied by the plain language of the comment itself: "The statute [I.C. § 37-2732(c)] does not contain a mental element. The committee concluded, based upon *State v. Lamphere*, 130 Idaho 630, 945 P.2d 1 (1997), a mental element as set forth in element 4 should be included." ICJI 403. Thus, the committee simply recognized the jurors needed to be instructed about the existence of a fourth element the State is required to prove beyond a reasonable doubt ("a mental element . . . should be included"). That comment does not mention a person's inability to commit the crime if the jurors found a mistake of fact on that person's part. Thus, the plain language of the comment to

ICJI 403 actually supports Ms. Heiner's argument that a mistake-of-fact defense should be addressed in a separate instruction.

That understanding is underscored by *Lamphere* itself. The question *Lamphere* addressed was simply whether the defendant's lack of knowledge as to the nature of the substance in his possession was relevant, and so, should have been deemed admissible during his trial. *Lamphere*, 130 Idaho at 633 (in *Lamphere*, the defendant actually suspected the vial he had contained methamphetamine, but was not certain of that fact). That evidence was relevant because the defendant could legitimately raise a mistake-of-fact defense under I.C. § 18-201(1). *Id*. However, the *Lamphere* Court did not discuss whether there needed to be a specific instruction on the language of I.C. § 18-201(1) in the trial on remand. *See generally Lamphere*, 130 Idaho 630. As such, the comment to ICJI 403 does not, simply by citing *Lamphere*, lend itself to the State's mistaken belief that item 4 is the instruction for I.C. § 18-201.

Rather, due to the limited scope of the *Lamphere* Opinion, the question of whether a post-*Lamphere* elements instruction adequately covered the mistake-of-fact defense is informed by other decisions, such as *McKean*, *Goggin*, and *State v. Blake*, 133 Idaho 237, 242 (1999). (*See generally* App. Br. (citing *Lamphere* only in regard to the assertion that the requested instruction was a proper statement of the law and that a reasonable view of the facts supported her legal theory).) All three of those decisions indicate a separate instruction is needed because a mistake of fact means the defendant is incapable of committing the charged offense.

Ultimately, this is one of those situations where the pattern instructions cannot, as a practical matter, address every question of law which may arise in a particular case. *See* Idaho Criminal Jury Instructions, Introduction and General Directions for Use, p.1. In such situations, "[a] trial judge should remain vigilant in observing the duty set forth in Idaho Code § 19-2132:

'In charging the jury, the court must state to them all matters of law necessary for their information.'" *Id*. (quoting I.C. § 19-2132(a)). As discussed *supra*, an instruction on the language of I.C. § 18-201(1) was necessary for the jurors' information about what finding certain facts mean under the law.

Item 4 of the elements instruction does not inform the jurors about Ms. Heiner's inability to commit the crime if they found she had a mistaken belief about what was in the baggie, even if they might otherwise be able to infer knowledge from the facts. (*See generally* Exhibits, p.24.) Since the proposed instruction was proper statement of the relevant law and was not adequately covered by the other instructions, the district court erred by denying Ms. Heiner's request for an instruction on the language of I.C. § 201(1). *Macias*, 142 Idaho at 510.

The State has not argued this error is harmless. (*See generally* Resp. Br.) Therefore, if this Court finds that the district court erred, the case should be remanded. *See, e.g.*, *State v. Almaraz*, 154 Idaho 584, 598-99 (2013).

II.

Alternatively, The District Court Erred When It Denied Ms. Heiner's Motion For A New Trial Based On The Failure To Instruct The Jury Pursuant To I.C. § 18-201(1)

As discussed in the Appellant's Brief, the district court gave two erroneous justifications for denying Ms. Heiner's motion for a new trial – that the jury was properly instructed about mistake of fact under the elements instruction; and that the proposed instruction was unnecessary because possession of a controlled substance is a general intent crime. (*See* App. Br., pp.11-12.) The State has not defended the district court's "general intent" justification. (*See generally* Resp. Br.) Rather, it simply reiterated its argument that item 4 of the elements instruction

sufficiently addressed the I.C. § 18-201(1) issue, and based on that, it contends the jury was properly instructed. (*See* Resp. Br., pp.9-12.)

As such, for the reasons discussed in the Appellant's Brief, the district court's alternate "general intent" justification is not a valid basis upon which to affirm its denial of Ms. Heiner's motion for a new trial. (*See* App. Br., p.12.) Thus, if this Court concludes that the jury was not sufficiently instructed as to mistake of fact for the reasons discussed in Section I, *supra*, the district court also erred by denying Ms. Heiner's motion for a new trial.

As before, the State did not argue the erroneous denial of the motion for a new trial was harmless. (*See generally* Resp. Br.) Therefore, if this Court finds the district court's decision on the motion for a new trial was erroneous, it should simply remand this case. *See, e.g., Almaraz*, 154 Idaho at 598-99.

CONCLUSION

Ms. Heiner respectfully requests this Court vacate the verdict and judgment and remand this case for a new trial.

DATED this 28th day of July, 2017.

_____/s/_____
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 28th day of July, 2017, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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1002 SAMUEL #61
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